

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

JOSEPH D. MAZE,

Petitioner,

V.

**J.C. GILES, and the ATTORNEY
GENERAL OF THE STATE OF
ALABAMA,**

Respondents.

Case No.: 2:11-cv-03933-JFG-JEO

MEMORANDUM OPINION

This is a habeas corpus case brought pursuant to 28 U.S.C. § 2254 by an Alabama state prisoner, Joseph D. Maze, *pro se*. (Doc. 1). Petitioner is currently incarcerated at the Alabama Therapeutic Education Facility following his convictions for two counts of robbery in the first degree. (Doc. 4). On March 12, 2013, the magistrate judge entered a report and recommendation pursuant to 28 U.S.C. § 636(b) recommending that this action be dismissed with prejudice. (Doc. 14). Maze filed a timely objection to the report and recommendation on April 30, 2013. (Doc. 18).

In the report and recommendation, the magistrate judge found that the instant habeas petition was untimely. (Doc. 14). The magistrate judge reached this conclusion based on a finding that Maze's underlying Rule 32 appeal was untimely, and as such, was not properly filed for purposes of tolling the AEDPA limitations period. (Doc. 14 at 5-6). In his objection, Maze attempts to relitigate the issue of the timeliness of his Rule 32 petition. In short, he argues that his Rule 32 appeal was timely because it was filed within 42 days of when he *received* documentation of the denial of the Rule 32 petition. (Doc. 18 at 7). However, the Alabama

courts considered the timeliness of Maze's Rule 32 appeal on multiple occasions (*see* doc. 14 at 2-3) and, absent a showing that the state court's rule was not firmly established and regularly followed, this court must defer to the state court determination with respect to the timeliness of the Rule 32 petition. *Webster v. Moore*, 199 F.3d 1256, 1259 (11th Cir. 2000). Accordingly, the magistrate judge correctly determined that Maze's Rule 32 petition was not properly filed.

Having carefully reviewed and considered *de novo* all the materials in the court file, including the findings and recommendation of the magistrate judge and Maze's objection, the court is of the opinion that the magistrate judge's findings are due to be and are hereby **ADOPTED** and his recommendation is **ACCEPTED**. As a result, Maze's § 2254 petition is due to be dismissed with prejudice. A separate final judgment will be entered.

DONE this 9th day of August, 2013.

A handwritten signature in black ink, reading "Sharon Lovelace Blackburn". The signature is written in a cursive, flowing style. Below the signature is a horizontal line.

SHARON LOVELACE BLACKBURN
CHIEF UNITED STATES DISTRICT JUDGE